

ACTION MEMORANDUM – RV1

DATE:

SUBJECT: Confirmation of Verbal Authorization for the CERCLA Removal Action at the Riverside Avenue Site, Newark, Essex County, New York.

FROM: Dwayne Harrington, On-Scene Coordinator
Response and Prevention Branch

TO: Walter E. Mugdan, Director
Emergency and Remedial Response Division

THRU: Eric J. Mosher, Chief
Response and Prevention Branch

Site ID No.: 02PC

I. PURPOSE

The purpose of this Action Memorandum is to document the verbal authorization for a removal action at the Riverside Avenue Site (“Site”), located in Newark, New Jersey. On November 9, 2009, the Emergency and Remedial Response Division (“ERRD”) Acting Director verbally authorized a total project ceiling of \$250,000, of which \$225,000 was for mitigation contracting to perform a removal action at the Site. The removal action was immediately necessary to mitigate the threat posed by the further discharge of the contents of tanks of hazardous substances from the site into the Passaic River. An action was initiated on the site on November 11, 2009, to secure further discharge from the site.

The Site is not proposed for listing on the National Priorities List (“NPL”). There are no nationally significant or precedent setting issues associated with this removal action.

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ERRD-RPB	ERRD-RPB	ERRD-RPB	ERRD-RAB	ORC-NYCSFB	ORC-NYCSFB	ERRD-DD	ERRD
HARRINGTON	DALOIA	MOSHER	ROTOLA	DOYLE	LIEBER	LaPADULA	MUGDAN

II. SITE CONDITIONS AND BACKGROUND

The Comprehensive Environmental Response, Compensation and Liability Information System Identification Number for this removal action is NJSFN0204232.

A. Site Description

1. Removal site evaluation (“RSE”)

The Site is a former paint manufacturing facility in an industrial area of Newark, New Jersey, and consists of two abandoned industrial buildings on approximately two acres. One building contains two 5,000-gallon tanks of hazardous waste, and the other building contains approximately eighty five 3000-10,000 gallon vessels, the contents of which have not been determined. There are also ten 12,000-gallon underground storage tanks (USTs) containing hazardous waste on the site.

On November 6, 2009, the New Jersey Department of Environmental Protection (NJDEP) requested EPA assistance to respond to an oil spill on the Passaic River in Newark, New Jersey. The material appeared to be oil, however, emergency responders reported that the material had a strong odor inconsistent with petroleum. EPA responded and assisted NJDEP in tracing the source of the spill to a discharge pipe at an abandoned industrial facility at 29 Riverside Avenue in Newark. NJDEP emergency response contractors contained the spill, removed contaminated debris from the impacted shoreline, and maintained spill containment at the point of discharge at the river bank.

NJDEP requested that EPA initiate an emergency removal action to identify and permanently remove the source of the discharge on the site. On November 11, 2009, EPA mobilized to the site with ERRS and identified the source of the spill as two 5,000 gallon tanks in the basement of one of the buildings on site. The tanks were interconnected and had been intentionally connected to a sewer discharge outlet in the building basement, which led and discharged into the Passaic River. Approximately one-third of the material remains in the tanks. ERRS sampled tanks and secured them from further discharge by capping the discharge lines and securing the tank valves. The circumstances of the discharge was referred to EPA Region 2 Criminal Investigation Division (CID).

Sampling results determined that the two basement tanks contain aqueous organic and inorganic hazardous waste (sampling results attached). The ten USTs on the property were sampled previously by the City of Newark’s environmental contractor and contain liquid hazardous waste, primarily volatile organic compounds (VOCs; sampling results attached).

On November 9, 2009, representatives from EPA Region 2 Response and Prevention Branch and Office of Regional Council (ORC) met with officials from the City of Newark on the site to confirm that the property was owned by the City through tax foreclosure, to obtain additional information on the site, and to obtain written access to the property from the City. The City had initiated an environmental assessment of the property through an environmental contractor, and requested a removal action at the site by EPA.

2. Physical location

The Site is located at 29 Riverside Avenue, Newark, Essex County, New Jersey, in an industrial park. There are multiple residents of various manufacturing capacities in the industrial park on both sides of the property (site map attached).

3. Site characteristics

There are two abandoned industrial buildings on the property, one three-story building and one five-story building (site photo attached). Both buildings are in disrepair and are deteriorating, and public access to the buildings is evident by extensive graffiti and evidence of transient occupancy.

The two 5,000 gallon tanks of hazardous waste are located in the basement of the five-story building, and the approximately eighty-five 3000-10,000 gallon vessels are located in the upper floors of the three-story building. An approximately 100' x 50' lot in front of the buildings contains ten 12,000 gallon underground storage tanks (USTs) of hazardous waste

4. Release or threatened release into the environment of hazardous substances, or pollutants, or contaminants

The basement tanks were sampled by EPA, and the USTs were sampled by the City of Newark's environmental consultant. The following table provides a list of chemicals identified on site and the appropriate hazardous substance designation under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

Description of Material	EPA Designation as a Hazardous Substance Under CERCLA
Methyl Isobutyl Ketone (MIK)	1,2,4
Toluene	1,2,4
Xylene	1,2,4
D001 (Ignitable Waste)	40 CFR 261.21

Legend

1. Clean Water Act, Section 311(b)(4)
2. Clean Water Act, Section 307(a)
4. RCRA, Section 3001

A threat of release to the environment was posed by the presence of hazardous substances at the Site. Many of the containers had leaked their contents onto the floor. The contents of the building had been through several freeze/thaw cycles which weakened the condition of the containers and further increased the threat of release. Continued weathering of the Site would likely have resulted in additional chemical spills and potential releases to the environment. This was the most likely mechanism for previous and future releases at the Site. The Site had no security service, fencing, or fire suppression methods. Should a fire have occurred, especially at night or during a weekend, it is unlikely that it would have been noticed until smoke or flames became visible and threatened the nearby population.

5. National priorities list (“NPL”) status

This Site is not on the NPL and there are no nationally significant or precedent-setting issues associated with the Site.

6. Maps, pictures and other graphic representations

Appendix 1 includes a site location map and photo.

B. Other Actions to Date

1. Previous actions

-- get history of previous EPA trailer removal-----

2. Current actions

EPA initiated a removal action at the Site on November 11, 2009 to secure the basement tanks from further discharge, and is monitoring conditions on the site.

C. State and Local Authorities’ Roles

1. State and local actions to date

On November 6, 2009, NJDEP and EPA responded to an oil spill on the Passaic River which was traced to the site. NJDEP emergency response contractors contained the spill, removed contaminated debris from the impacted shoreline, and maintained spill containment at the point of discharge at the river bank.

2. Potential for continued state/local response

The City of Newark and State of New Jersey do not have ability to perform the necessary actions on the site.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

The conditions at the Site met the criteria for a CERCLA removal action as described in 40 CFR §300.415(b)(2) of the National Contingency Plan (“NCP”). Factors that support conducting a removal action at the Site include the following:

A. Threats to Public Health or Welfare

(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

The hazardous substances located at the Site are not secure and pose a threat of release to the environment. Some of the vessels inside the building are leaking their contents onto the floor. Trespassers entering the facility are at risk of being exposed to the hazardous substances inside the building.

(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

Over 250 containers existed at the Site. Many of these containers were in poor condition, being rusted and dented. The condition of the building was deteriorating and provided little protection for the containers inside the building. Many of the containers had already leaked their contents and others posed an imminent threat of release.

(v) Weather conditions exist that may cause hazardous substances or pollutants or contaminants to migrate or be released;

As described above, exposure to weather had already caused many of the containers to fail and release their contents. Continued exposure to the elements would have compromised more containers over time resulting in additional releases of hazardous substances.

(vi) Threat of fire or explosion;

Many of the waste containers on-site were ignitable. Since the facility was abandoned with no security or fire suppression methods, a fire would have resulted in a major release of hazardous substances. Vandals and trespassers were known to be inside the building and could have initiated a fire. An airborne release of chemicals from the Site could have had a severe adverse health impact on the surrounding commuters as well as the residential community.

(vii) The availability of other appropriate federal or state response mechanisms to respond to the release.

No other federal or state response mechanism was available to respond in a timely manner to the significant threat which the Site presents.

B. Threats to the Environment

The Site is located on the bank of the Passaic River, and the release of the basement tanks in November 2009 discharged directly into the river. Further releases from the site may also result in hazardous substances being transported off-site via surface runoff or discharge lines.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response action selected in this Action Memorandum, may have presented an imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COST

A. Proposed Actions

1. Proposed action description

The objective of the action was to mitigate the threat of release posed by hazardous substances located at the Site. These hazardous substances included paints, solvents and ignitable materials in containers ranging in size from 1 to 55 gallons. The action was initiated on July 15, 2009 and was completed on July 17, 2009.

The removal action began with over packing the leaking containers of hazardous substances and developing a disposal strategy. The disposal strategy involved sampling to determine an appropriate disposal facility. The secured containers were subsequently transported off site. The selected disposal facility was in compliance with the EPA Off Site Rule. At the conclusion of this removal action EPA did not need to perform any post removal site control measures. The City of Syracuse and the NYSDEC will continue to monitor the Site and attempt to have it demolished. Upon demolition, NYSDEC will initiate an investigation of the sub slab areas.

2. Contribution to remedial performance

The removal action at the Site was consistent with the requirement of Section 104(a)(2) of CERCLA, which states, "any removal action undertaken...should...to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or the threatened release concerned." The removal actions implemented were consistent with any future remedial action.

3. Description of alternative technologies

Alternative technologies were considered, but not implemented during this removal action. Off-site disposal was the best available option for this removal action. Alternative technologies considered for removal actions are evaluated on their cost-effectiveness, timeliness, and efficiency.

4. Engineering evaluation/cost analysis (EE/CA)

Due to the time-critical nature of this removal action, an EE/CA was not prepared.

5. Applicable and/or relevant and appropriate requirements (ARARs)

ARARs, within the scope of work applicable for this removal action, were complied with to the maximum extent practicable. The ARARs considered for this removal action were Resource Conservation and Recovery Act, the Hazardous Materials Transportation Uniform Safety Act, and the Occupational Safety and Health Act.

6. Project schedule

The removal action was initiated on July 15, 2009 and was completed on July 17, 2009. A summary of the funding verbally authorized by the Acting ERRD Director on July 14, 2009, as documented in this memorandum, is presented below.

Extramural Costs

Regional Removal Allowance Costs:

<u>COST CATEGORY</u>	<u>AMOUNT</u>
Regional Allowance Costs (Total ERRS contractor costs including 20% cost contingency)	\$40,000
Extramural Costs not funded from the Regional Allowance (RST2 Contract)	\$10,000
TOTAL EXTRAMURAL COSTS	\$50,000

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

The containers stored at the Site were abandoned, damaged and many were leaking their contents. Delayed action, or no action, could have resulted in additional releases of hazardous substances into the environment.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

This Action Memorandum documents that the removal action has been performed by EPA as a fund-lead action. The On-Scene Coordinator will work with the staff of the Removal Action Branch and the Office of Regional Counsel to locate any viable potentially responsible parties and to evaluate EPA's cost recovery options.

The total EPA cost for this removal action based on full-cost accounting practices that will be eligible for cost recovery is estimated to be \$80,844 and was calculated as follows:

Cost Type	Funding Requested in this Action Memorandum
Direct Extramural Costs	\$ 50,000
Direct Intramural Costs	\$ 10,000
Subtotal, Direct Costs	\$ 60,000
Indirect Costs (Total Direct Costs x Regional Indirect Cost Rate – 34.74%	\$ 20,844
Estimated EPA Costs Eligible for Cost Recovery	\$ 80,844

This estimate includes direct costs, which include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site specific direct costs, consistent with full cost accounting methodology which became effective on October 2, 2000. These estimates do not include prejudgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of the removal action. The estimates are for illustrative purposes only and their use in this Action Memorandum may not be relied upon by any third party as binding upon EPA. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Winkelman Site, located in the City of Syracuse, Onondaga County, New York. This document was developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

Conditions at the Site met the NCP Section 300.415(b)(2) criteria for a removal action. I recommend your approval of this Action Memorandum. The total funding requested in this confirmation of verbal authorization for a removal action is \$50,000, of which \$40,000 is for mitigation contracting.

Please indicate your formal authorization for the removal action at the Winkelman Site, as per current Delegation of Authority, by signing below.

Approved: _____
Walter E. Mugdan, Director
Emergency and Remedial Response Division

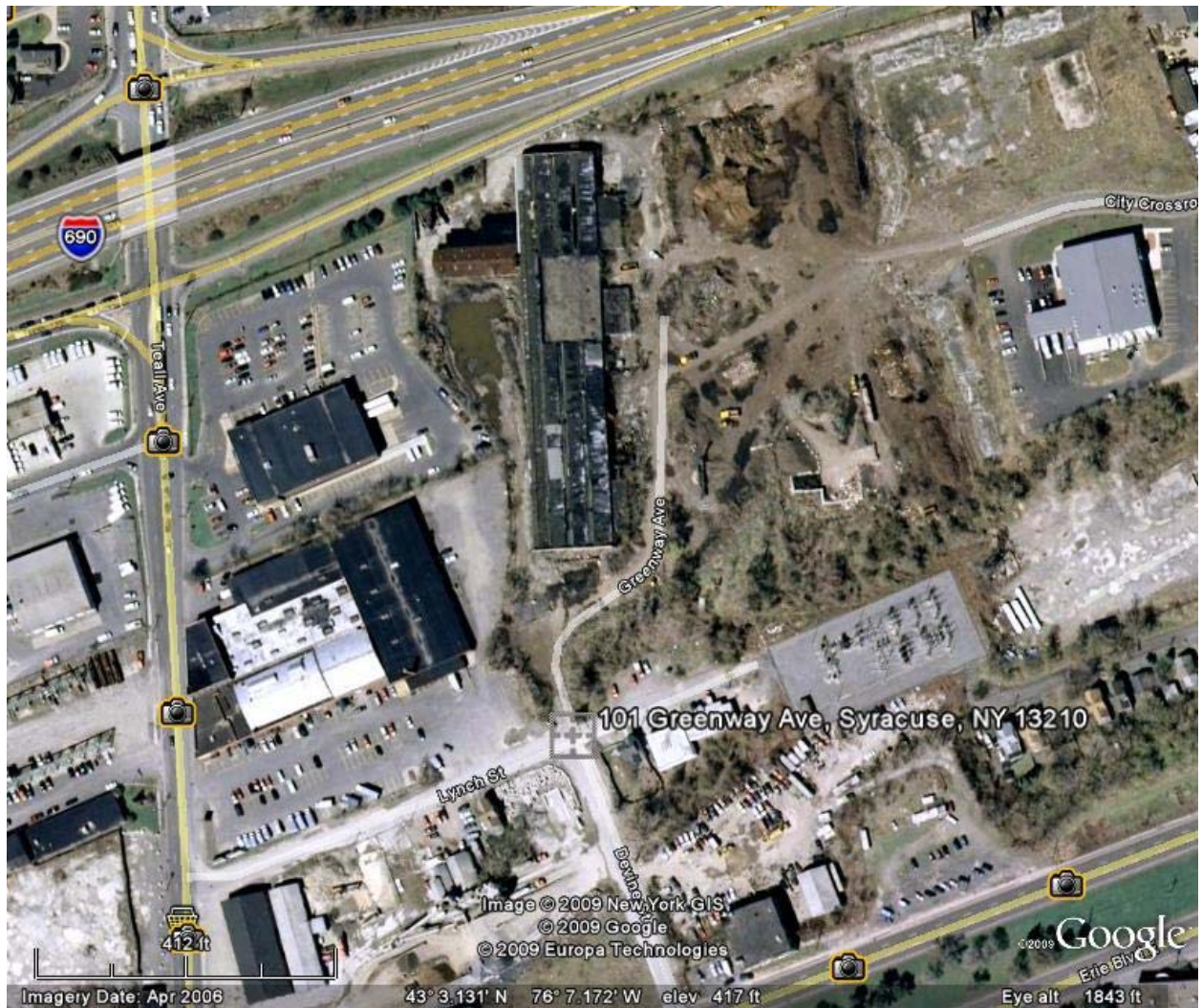
Date: _____

Disapproved: _____
Walter E. Mugdan, Director
Emergency and Remedial Response Division

Date: _____

cc: (upon approval)
W. Mugdan, ERRD-D
J. LaPadula, ERRD-DD
E. Mosher, ERRD-RPB
J. Daloia, ERRD-RPB
J. Rotola, ERRD-RAB
B. Grealish, ERRD-RAB
G. Zachos, ACSM/O
C. Peterson, ERRD-NYRB
T. Lieber, ORC-NYCSFB
J. Doyle, ORC-NYCSFB
P. Brandt, PAD
R. Manna, OPM-FMB
K. Giacobbe, OPM-GCMB
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P. McKechnie, OIG
A. English, NYSDEC
A. Raddant, USDOJ
L. Rosman, NOAA
G. Litwin, NYSDOH
C. Kelley, RST

Appendix 1 - Area Site Map



****CONFIDENTIAL****

ENFORCEMENT SENSITIVE

DO NOT RELEASE UNDER FOIA

DO NOT PLACE IN PUBLIC ADMINISTRATIVE RECORD

CONFIDENTIAL ENFORCEMENT ADDENDUM

Winkelman Site
Syracuse, Onondaga County, New York

A. Potentially Responsible Parties (PRP) Search

At this time, a viable Responsible Party has not been identified. Information received from City officials indicates that the property has been abandoned and no taxes have been paid since 2005.

A PRP search will be performed and every attempt to locate the owner of the facility will be made.

B. Notification of PRPs of Potential Liability and of the Required Removal Action

Upon identification of a Responsible Party, their liability will be assessed and 104(e) letters will be issued.

C. Decision Whether to Issue an Order

A decision on whether to issue an Order will be made once a viable Responsible Party has been identified.

D. Negotiation and Order Issuance Strategy

An Order has not been issued for this Site.